

IN THE MATTER OF

**CLOVERLAND FARMS DAIRY,
T/A ROYAL FARMS**

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 09-012C

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DECISION AND ORDER

On July 13, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Cloverland Farms Dairy t/a Royal Farms to amend an existing gasoline service station Conditional Use to add two additional dispensers (4± pumps) and, apparently, to increase the hours of operation for the gasoline service station and convenience store to 24 hours daily,¹ in a B-2 (Business: General) Zoning District, pursuant to Section 131.N.25 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioner. At the outset of the hearing, Mr. Meachum stated the Petitioner concurred with the Technical Staff Report ("TSR") and would present no additional evidence or testimony.

FINDINGS OF FACT

Based upon the preponderance of evidence, I find the following facts:

¹ Neither the petition nor the Technical Staff Report note the proposed 24-hour operation. It appears in Note X of the Conditional Use Plan. The BA 96-004E Decision and Order approving the original station and store limited the hours of operation to 5:00 a.m. to 12:00 a.m., seven days a week.

1. The subject property is located in the 3rd Election District on the northeast corner of Tridelphia and Ten Oaks Roads and is also known as 3901 Ten Oaks Road (the "Property" or "Site"). It is referenced on Tax Map 122, Grid 8, as Parcel 55.

2. The generally rectangular Property is located in the northeast quadrant of the roundabout intersection of Ten Oaks and Triadelphia Roads. It is improved with a 2,925- square foot convenience store situated in the Site's central eastern area, and a gasoline service station canopy with two pump islands situated in the southwest area. The canopy lies about 33 feet from Ten Oaks Road and 38 feet from Triadelphia Road. Seventeen parking spaces including one disabled space are provided on the Site. To the north side of the parking area is an enclosed dumpster. The southern developed portion of the Site is mostly paved. Landscaped islands form a perimeter along the road frontage. The Property's northern area is lawn and is the site of the existing septic area.

3. Vicinal properties. The B-2 zoned parcel to the south, across Tridelphia Road, is the site of a commercial structure in use as a liquor store. The B-2 zoned Parcel 105 to the west, across Ten Acres Road, is improved by a one-story commercial structure and a two-story building used by a bus company. The B-2 zoned Parcel 328 and a portion of Parcel 59 to the southwest, across the intersection, are improved, respectively, by a High's Dairy Store and gasoline pump islands.

4. Roads. Oaks Road has two travel lanes within an 80-foot right-of-way. The posted speed limit is 35 miles per hour. Tridelphia Road has two travel lanes within a 60-foot right-of-way.

5. Water and Sewer Service. The Property is served by private well and septic facilities.

6. General Plan. The 2000 General Plan Policies Map 2000-2020 designates the Property as "Rural Residential." The 2000 General Plan Transportation Map 2000-2020 depicts Tridelphia and Ten Oaks Roads as Major Collectors.

7. Zoning History. In BOA Case No. 96-004E, the Board of Appeals approved a special exception for a gasoline service station and convenience store (1996) on the Property.

8. The Petitioner proposes to expand the gasoline service station conditional use by adding four MDP gasoline dispensers, removing the existing 48' by 25' stand-alone canopy covering the gasoline service station operation and replacing it with a 40' by 48', freestanding canopy in about the same location. The new canopy will be sited about 31 feet from Ten Oaks Road and about 34 feet from Tridelphia Road. No changes are proposed to the exiting convenience story, parking areas, or access points from Ten Oaks and Tridelphia Roads. The gasoline service station's outside operations would include dispensing gasoline, oil, water, and pressurized air. Additionally, the gasoline service station and convenience store would operate 24 hours daily, 7 days a week. A maximum of five employees will be employed on-site, per shift.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in

the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The General Plan designates the area as a Rural Residential Land Use. Because the cause the proposal is a modernization of an existing commercial use, it will be harmonious with area commercial uses, which define the immediate area.

The Nature and Intensity of the Use. The proposed use will not change the nature of the use. The additional pumps and expanded hours of operation will not change the intensity of use.

The size of the site in relation to the use. The proposed use would only moderately increase the area of the Site. The site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. Ten Oaks and Tridelphia Roads are Major Collectors. The area accommodates substantial automobile and truck traffic. There is no evidence that traffic along the two roads would be impaired by the use. The existing driveways will continue to provide safe access to the Conditional Use site with adequate sight distance.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed expansion of the conditional use would continue to be combined with a permitted use, a convenience store. The combination of uses is appropriate, given that all uses meet or exceed setback requirements.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in a B-2 district. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a gasoline service station in a B-2 district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The Petitioner proposes to increase the number of MDP gasoline dispensers and to operate the gasoline station and convenience store 24 hours a day. According to the TSR, additional dispensers unlikely to cause noise or dust. There is no evidence the use will cause fumes, odors, glare, vibrations, or hazards. I therefore conclude these inherent operational adverse effects will not be greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed structures and uses meet all setback requirements and height restrictions. The existing and any proposed landscaping meet minimum requirements. I therefore conclude the location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

No modification to the existing 17-space parking space area is proposed. The proposed use will comply with Section 133.D.4, which requires three parking spaces for a gasoline service station and six parking spaces for the convenience store. The medians between parking areas will

be landscaped. The existing driveways and the existing location of the refuse area will continue to minimize adverse impacts on adjacent properties.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The existing driveways appear to provide continued safe access, with adequate sight distance.

II. Specific Criteria for Gasoline Service Stations (Section 131.N.25)

a. The use will not adversely affect the general welfare or logical development of the neighborhood or area in which the station is proposed and will not have a blighting influence as a result of a proliferation of gasoline service stations within a particular area.

Because the proposed conditional use is an expansion of an existing identical use on the site, I conclude it would not result in a proliferation of gasoline service stations within the area, adversely affect the area's general welfare or logical development, or have a blighting influence, in accordance with Section 131.N.25.a.

b. The minimum lot size for a gasoline service station is 20,000 square feet. If a gasoline service station is combined with another use on the same lot, the minimum lot size shall be increased in accordance with the provisions of Section 131.N.25.i.

The 1.362-acre Site exceeds the minimum lot size of 20,000 square feet, as required by Section 131.N.25.b. The area of the combined uses area is addressed below.

c. The lot shall have at least 120 feet of frontage on a public road. If at the intersection of two public roads, the total of the frontage along both roads may be used if ingress or egress is provided to both roads.

The Site has about 320 feet of frontage on Ten Oaks Road and about 500 feet of frontage on Tridelphia Road, in accordance with Section 131.N.25.c.

d. At least 20 percent of the site area shall be landscaped. The landscaping plan shall include plantings which enhance the appearance of the site from public roads and provide appropriate buffering for adjacent uses.

Based on the Conditional Use Plan, 57 percent of the Site is landscaped, in accordance with Section 131.N.25.d.

e. Solid walls such as masonry or wood and masonry may be required by the Hearing Authority when the site borders a residential district. When solid walls are required, landscape planting is required on the outside of the wall.

This section does not apply to the proposed Conditional Use. Although the Site is located adjacent to the RR-DEO zoned MD 32 right-of-way and would be considered as adjoining a residential district according to Section 16.108(b)(1.1) of the Subdivision and Land Development Regulations, the requirement of this section is that walls may be required when the site "borders" a residential district. The intent of this section is that walls would be appropriate to provide screening in situations where a property directly abuts a residential district.

f. Refuse areas shall be fenced or screened from view. The plan shall indicate the disposal methods to be used for all waste material generated by vehicle repair operations.

An enclosed dumpster is depicted on the Conditional Use Plan, in accordance with Section 131.N.25.f.

g. Access driveways and on-site paved areas shall be designed and located to ensure safe and efficient movement of traffic and pedestrians.

No changes to the existing access points are proposed and the Conditional Use operation is nearly identical to the existing operation on the Site. I therefore conclude the access points will likely continue to provide safe and efficient access, as will the interior circulation pattern, in accordance with Section 131.N.25.g.

h. Operation

(1) Outside operations shall be limited to the dispensing of gasoline, oil, water, pressurized air, the changing of tires and minor servicing. Storage of all automotive supplies shall be within the main structure.

The petition states that outside operations are limited to the dispensing of gasoline, oil, water, and pressurized air, in compliance with Section 131.N.25.h(1).

(2) Vending machines and the sale of propane are permitted as accessory uses, provided these uses are screened or enclosed if required by the Hearing Authority.

The petition does not mention vending machines or the sale of propane.

(3) The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the gasoline service station.

Although the petition does not specifically comment on this requirement, the Petitioner is responsible for compliance.

(4) Where a gasoline service station is adjacent to a residential district, its hours of operation and a detailed lighting plan shall be approved by the Hearing Authority.

The Conditional Use Plan states the convenience store and gasoline service will operate 24 hours a day, seven days a week, which I am approving absent evidence that the hours of operation will have a detrimental effect on existing or proposed development.

i. Other Uses

(1) Other uses may be located on the same lot as a gasoline service station, including uses permitted in the zoning district as well as car washes and convenience stores, provided that all uses are approved by the Hearing Authority and the minimum lot area is increased to accommodate the

combination of uses. At a minimum, the minimum lot size of 20,000 square feet must be increased by an area equal to the gross square footage of floor area, parking area and loading or stacking areas required for the additional uses.

There are no proposed changes to the previously approved convenience store building or parking areas which would affect the site area required to support the uses. The 1.362-acre size of the Site exceeds the area required (approximately 25,913 square feet) to support the combined gasoline service station and convenience store uses, including the parking and loading areas. The petition accords with Section 131.N.25.i(1).

(2) In the PEC, M-1 and M-2 districts, the gross floor area of convenience stores shall not exceed 3,500 feet.

This section does not apply.

ORDER

Based upon the foregoing, it is this 17th day of July 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Cloverland Farms Dairy t/a Royal Farms to amend an existing Gasoline Service Station Conditional Use to add two additional dispensers (4± pumps) and to increase the hours of operation for the gasoline service station and convenience store to 24 hours a day, in a B-2 (Business: General) is hereby **GRANTED;**

Provided, however, that:

1. The conditional use will apply only to the uses and structures as described in the petition and Conditional Use Plan submitted, and not to any other activities, uses, structures, or additions on the Property.

2. Abandonment. The premises (including landscaping) of the gasoline service station, if not in continuous operation or abandoned shall be maintained in the same manner as is required under these regulations for operating gasoline service stations.

3. Voidance of the Use. The gasoline service station conditional use shall become void upon notice of abandonment by the owner. If notice of abandonment is not received, but it is determined by the Department of Planning and Zoning that the gasoline service station has not been in continuous operation for a period of twelve months, a revocation hearing shall be initiated by the Department of Planning and Zoning in accordance with the procedures set forth in Section 131.L. For purposes of this subsection, "continuous operation" shall mean operation as a gasoline service station at least eight hours per day, five days per week.

4. Removal. If the gasoline service station is abandoned and the conditional use becomes void as provided above, all gasoline pumps, pump island canopies, and other improvements (not including buildings) shall be removed from the site within six months of the date the conditional use becomes void.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L. LEFAIVRE
Michele L. LeFaivre

Date Mailed: 7/22/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.